

Planning Board Minutes 08/16/2016

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MONSON PLANNING BOARD MINUTES AUGUST 16, 2016

MEMBERS PRESENT: Craig Sweitzer, Paul Hatch, Kevin Haley, Tara Hengeveld, and Marilyn Gorman Fil

MEMBERS ABSENT: Karen King

7:00 Minutes of June 21 2016 and July 19, 2016.

Paul Hatch moved to accept minutes of July 19, 2016 with a correction on Page 9 to change the work talk to take.

Craig Sweitzer seconded.

Voting Aye: Craig Sweitzer, Paul Hatch, Marilyn Gorman Fil and Tara Hengeveld

Kevin Haley abstained.

Paul Hatch moved to accept the minutes of June 21, 2016 with a correction to Page 2 by inserting the word "said" now reads Mr. Sweitzer said.....

Craig Sweitzer seconded.

Voting Aye: Craig Sweitzer, Paul Hatch, Kevin Haley and Marilyn Gorman Fil.

Tara Hengeveld abstained.

ANR plan submitted for property located at 53 Wilbraham Road, owned by Catherine and Raymond Beaudoin.

Craig Sweitzer stated the plan shows one existing lot that is to be separated into two lots. He stated a barn is shown on the plan that is fifty five feet from the property line. This does not meet the seventy five feet setback required by the Zoning Bylaws. No wetlands are shown on the plan. Craig Sweitzer questioned if anyone was present representing the property owner.

Raymond Beaudoin was present and stated this was strictly an ANR plan.

Craig Sweitzer stated typically the plan notes that there is in excess of 60,000 square feet of upland.

Raymond Beaudoin stated the barn is existing.

Craig Sweitzer stated the side setback is changed by the division of land and the Board will deny the plan as it shows structures that do not meet the Zoning Bylaws, or if Mr. Beaudoin choses he can withdraw the plan, in which case the Board would need a written request.

7:15 Craig Sweitzer reconvened a public hearing for ZPT Energy, LLC for a solar facility at 53 Wilbraham Road.

Dan Laroche stated the applicant ZPT Energy, LLC has requested a continuation for a peer review. At this point the Town is in discussion with two different companies regarding the review, Nitsche Engineering and Weston & Sampson. Initially the Town contacted Tighe & Bond and forwarded the complete package to David Loring but they have done work for ZPT and on the advice of Town Counsel the Town looked for someone who has not worked for ZPT before.

Craig Sweitzer stated that would be to avoid a potential conflict. He questioned how the fees compared?

Dan Laroche stated one proposal came in at \$5200.00 and the other \$5800.00.

Craig Sweitzer questioned if the proposals were compared to make sure that both companies would be doing the same review?

Dan Laroche stated yes.

Craig Sweitzer stated the applicant has requested a continuation in order for a peer review to be completed is there a motion to continue?

Paul Hatch so moved.

Tara Hengeveld seconded.

It was so voted, unanimous.

Craig Sweitzer stated the Planning Board will meet on September 20, 2016.

The Board informally discussed a change to the Zoning Bylaws regarding Special Permits.

Evan Brassard stated presently there are provisions in the Bylaws to grant a Special Permit but at this time there are no provisions to revoke a Special Permit.

Craig Sweitzer questioned if there was a model bylaw.

Evan Brassard stated there was and had forwarded it to the Planning Board.

Craig Sweitzer questioned if there was such a thing as too much time before a Town Meeting for a hearing for a bylaw change.

Dan Laroche stated a hearing must be held within 6 months of the Town Meeting.

A member of the audience questioned the process of endorsing an ANR plan?

Craig Sweitzer stated it stands for Approval Not Required and if the lots meet the criteria regarding area and frontage the Board usually signs it.

7:31 Craig Sweitzer convened a public hearing to review a petition to amend Section 6.23 of the Monson Zoning Bylaws by 184 registered voters of the Town of Monson that would allow Large Ground Mounted Photovoltaic Installations in the commercial zones not in residential zones. Advertised in the Journal Register the weeks of August 1st and August 8th, 2016.

Craig Sweitzer gave a brief explanation of the way in which an amendment to the Zoning Bylaws occurs, by request of the Selectmen, by initiative of the Planning Board and petition by 100 residents or more of the Town of Monson.

Craig Sweitzer stated currently Large Ground Mounted Photovoltaic Installations are allowed in all districts.

Craig Sweitzer read a revision submitted to the Board by a member of the audience that would allow Large Ground Mounted PV installations in the Central Commercial, General Commercial, Industrial and Commercial Recreation Districts by special permit with site plan review, and minimum lot size 250 – 650 KW DC, 5 acres, over 650 – 1500 KW DC, minimum lot size 10 acres, over 1500 – 3000 KW DC, minimum lot size 20 acres and over 3000 KW DC, minimum lot size 50 acres. Craig Sweitzer questioned how the Planning Board felt about the two proposals the latter that was handed in at this meeting is substantially different from the proposal that was signed by 184 residents of Monson?

Evan Brassard stated the Board could not change the language of the proposal. The Board must act on the language of the petition that is the subject of the hearing tonight. An amendment could be made at a Town Meeting, but as no Town Meeting body is in session tonight, the only proposal the Board can vote on at the present time is the one submitted with the petition.

Craig Sweitzer questioned how the Board felt about the changes?

Paul Hatch stated there is a significant difference between the two proposals.

Evan Brassard stated changes can be made from the Town Meeting floor by submitting two written copies of the amendments one to the Moderator and the other to the Town Clerk and it is at the discretion of the Moderator whether the changes fall within the scope of the original submission.

John Beaudoin 48 Wilbraham Road stated he wanted to remind everyone of MGL Chapter 40A Section 3, regarding un-duly regulating solar facilities and he believed that is what was happening with the amendments proposed by the petition, and the amendments that were handed to the Board at this meeting.

Craig Sweitzer stated he appreciated that information because there are other laws that come into play.

Dan Laroche stated there is no case law on what un-duly regulating means so that would be subject to court interpretation.

Jessica Allen 165 Palmer Road, stated she would like to note the State Department of Energy Resources specifically recommends siting solar arrays in commercial and industrial districts, and previously disturbed areas.

Evan Brassard stated in speaking to the Attorney Generals' office unreasonable could have a different meaning depending where you live. In Monson 20 acres may be deemed unreasonable, because we have a lot of open land, but in the eastern part of the State would be deemed reasonable. Another concern for the Town is that the total acreage of commercially zoned land is approximately 230 acres, after reviewing this it is difficult to see where a solar facility could be reasonably sited. This could result in a review by the DOER who may find that the Towns' Bylaw is unreasonably regulating and the Town could lose its Green Community status. The Town acquired the Green Community status in 2010 and since then has received approximately three hundred and twenty five thousand dollars in grant money for various energy saving projects.

Craig Sweitzer questioned when the petition was received?

Evan Brassard stated it was received approximately a month ago and the law says if you have over one hundred signatures you are automatically on the warrant for the next Town Meeting, Special or otherwise.

Craig Sweitzer stated his assumption was that the Planning Board had three courses of action, recommend in favor, recommend against or take no action.

Jenna Berry 93 Thayer Road stated she understood the Town could change the zoning map.

Craig Sweitzer stated that was correct and it was the same process as changing a bylaw.

A member of the audience questioned if a solar project was allowed with a special permit?

Craig Sweitzer stated no, a solar facility is allowed by right with site plan review.

Robert Kaddy Butler Road suggested solar facilities were solar power plants being placed in a rural residential area.

Craig Sweitzer referred Mr. Kaddy to the Bylaw stating the bylaw says that this is a Large Ground Mounted Photovoltaic Installation that is allowed by right with site plan approval and that is what the Planning Board must adhere to.

Craig Sweitzer stated for discussion he would have liked input from Town Counsel and time to review other Towns bylaws, and to review case law. He stated 184 signatures could not be ignored but he did not know if he had enough information to vote one way or the other.

Kevin Haley stated he was on the fence as well, he saw both points of view and he would recommend to make no recommendation at all.

Paul Hatch stated the Board has to vote on the language of the petition and there is so little commercially zoned property, and that makes the bylaw quite restrictive.

Tara Hengeveld stated her thoughts are that there are 184 residents of Monson who believe that the action taken by the residents of Monson at the last Town Meeting should be rectified, and they have taken the steps to do that, and the process should be supported. On the other hand she stated she was not sure that this was the answer. She stated she was not sure that restricting solar facilities to commercially zoned land was the way to go, and would agree with the other Planning Board members to make no recommendation.

John Beaudoin 48 Wilbraham Road stated this is about not in my backyard.

Mike McGehee stated he was curious there seems to be a lot of applause associated with the exchange of trees for solar and he wondered if that was because of carbon impact or visual impact.

Craig Sweitzer stated he wanted to be clear that the hearing this evening was for the change to the bylaw, and not for the construction of a solar facility on Wilbraham Road.

Jessica Allen stated she had a conversation with the Town Planner and was shocked to learn that Brendan Gove of ZPT threatened the Town with a lawsuit if the Bylaws were not changed. She questioned if the Planning Board was aware of the threat to sue?

Craig Sweitzer stated no, but the Planning Board is often threatened with a lawsuit and the threat does not alter the way the Board votes.

Jessica Allen questioned if the Board or Town Counsel did its due diligence to see if ZPT had a case and if the threat had basis.

Craig Sweitzer stated he did not know and the hearing tonight was about the change to the Zoning Bylaws.

Jessica Allen stated Mass Live had an article today that someone from the Town said that Gove and ZPT would definitely have a case. She stated they were disappointed that when the Town changed the bylaw to allow minimum size lots for different solar installation capacities no one at the Town looked at districts, so now a solar installation can go in anywhere on a six acre parcel. The Town did not look at the recommendations from DOER that strongly recommends siting on commercial or industrial land or previously disturbed land.

Craig Sweitzer questioned if there was a motion to close the public hearing?

Paul Hatch so moved.

Kevin Haley seconded the motion.

It was so voted, unanimous.

Paul Hatch moved to make no recommendation to Town Meeting.

Kevin Haley seconded the motion.

Craig Sweitzer stated he was comfortable with the motion because he felt he did not have enough information.

Paul Hatch stated the Board received one proposal as result of a petition by residents of the Town and then a significantly different proposal for changes to the bylaw was submitted at the hearing this evening, there was no time to study the proposal or make comparisons.

It was so voted, unanimous.

Tara Hengeveld moved to adjourn.

Craig Sweitzer seconded.

It was so voted, unanimous.

Respectfully submitted,

Linda A. Hull